

NOTICE  
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2011 IL App (4th) 100883-U

Filed 12/29/11

NO. 4-10-0883

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

ROMARIS BARKER,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Sangamon County
LEE RYKER and MICHAEL P. RANDLE,	)	No. 09MR899
Defendants-Appellees.	)	
	)	Honorable
	)	Leo J. Zappa, Jr.,
	)	Judge Presiding.

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JUSTICE POPE delivered the judgment of the court.

Presiding Justice Turner and Justice Cook concurred in the judgment.

### ORDER

¶ 1 *Held:* Plaintiff's appeal is dismissed as moot because plaintiff has been released and is currently serving his MSR term and the good-conduct credit he seeks cannot reduce that term.

¶ 2 In December 2009, while still incarcerated at the Lawrence Correctional Center, plaintiff, Romaris Barker, proceeding *pro se*, filed a *mandamus* complaint against defendants, Lee Ryker, the former warden of the Lawrence Correctional Center and Michael P. Randle, the former director of the Department of Corrections (DOC), claiming he was entitled to additional earned good-conduct credits pursuant to section 3-6-3(a)(4) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/3-6-3(a)(4) (West 2004)).

¶ 3 In May 2010, defendants filed a motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-615 (West 2008)), arguing plaintiff

failed to state a claim for *mandamus* because he was not entitled to earned good-conduct credits due to his conviction for (attempt) home invasion (see 720 ILCS 5/8-4(a), 12-11(a)(3) (West 2004); *People v. Barker*, No. 04-CF-4650 (Cir. Ct. Lake County) (eight-year prison term for December 22, 2004, (attempt) home invasion).

¶ 4 In August 2010, the trial court granted defendants' motion to dismiss plaintiff's complaint.

¶ 5 Plaintiff appeals, arguing the trial court erred in dismissing his *mandamus* complaint. We dismiss plaintiff's appeal as moot.

¶ 6 I. BACKGROUND

¶ 7 On a date unspecified in the record, plaintiff was convicted of (attempt) home invasion (720 ILCS 5/8-4(a), 12-11(a)(3) (West 2004)). In August 2008, the trial court sentenced him to eight years in prison, followed by two years of mandatory supervised release (MSR). While imprisoned, plaintiff sought good-conduct credit through his participation in DOC educational programs. However, DOC advised plaintiff he was ineligible for the credit because of the nature of his offense.

¶ 8 In December 2009, plaintiff filed a *mandamus* complaint seeking to compel defendants to grant him the credit. Specifically, plaintiff argued he was entitled to additional good-conduct credit pursuant to section 3-6-3(a)(4) of the Unified Code (730 ILCS 5/3-6-3(a)(4) (West 2004)).

¶ 9 In May 2010, defendants filed a motion to dismiss pursuant to section 2-615 of the Procedure Code (735 ILCS 5/2-615 (West 2008)), arguing plaintiff failed to state a cause of action. Specifically, defendants argued plaintiff had been convicted of (attempt) home invasion,

an inchoate crime relating to a Class X felony, which rendered him ineligible for the credit. In response, plaintiff argued he was eligible to receive the credit because he had not been convicted of any of the disqualifying offenses listed under section 3-6-3(a)(4) of the Unified Code.

¶ 10 In August 2010, the trial court granted defendants' motion to dismiss plaintiff's *mandamus* complaint, finding plaintiff failed to show a clear right to the relief he requested.

¶ 11 This appeal followed.

## ¶ 12 II. ANALYSIS

¶ 13 We initially note plaintiff was released from prison and began serving his two-year MSR term on June 7, 2011. As a result, defendants argue the fact plaintiff is no longer incarcerated renders his appeal moot. We agree.

¶ 14 "An appeal is considered moot where it presents no actual controversy or where the issues involved in the trial court no longer exist because intervening events have rendered it impossible for the reviewing court to grant effectual relief to the complaining party." *In re J.T.*, 221 Ill. 2d 338, 349-50, 851 N.E.2d 1, 7-8 (2006). In this case, no effectual relief can be granted because plaintiff was released from prison.

¶ 15 The language of the Unified Code indicates MSR is a "term in addition to the term of imprisonment." 730 ILCS 5/5-8-1(d) (West 2004). While MSR is a part of an inmate's sentence (*Taylor v. Cowan*, 339 Ill. App. 3d 406, 410, 790 N.E.2d 897, 902 (2003)), it is separate and distinct from the term of imprisonment (*Faheem-El v. Klinicar*, 123 Ill. 2d 291, 298, 527 N.E.2d 307, 310 (1988)). Although an individual on MSR may be in the "legal custody" of DOC for the duration of his release period (*Barney v. Prisoner Review Board*, 184 Ill. 2d 428, 430, 704 N.E.2d 350, 351 (1998); 730 ILCS 5/3-14-2(a) (West 2008)), the MSR term does not constitute a

term of imprisonment. An inmate is not to be released to MSR until he has served his full term of imprisonment less any credit for good conduct. 730 ILCS 5/3-3-3(c) (West 2008). While section 3-6-3(a)(4) permits the reduction of a prison term for completing certain educational programs, it does not reduce the term of the MSR period. See 730 ILCS 5/3-6-3(a)(4) (West 2004). As a result, any sentence credit granted by this court could not shorten plaintiff's MSR term. See *People v. Whitfield*, 217, Ill. 2d 177, 200-201, 840 N.E.2d 658, 672 (2005) (recognizing MSR is statutorily mandated and cannot be altered by judicial fiat). Accordingly, this court cannot provide plaintiff with any effectual relief. Thus, plaintiff's appeal is moot.

¶ 16 Further, the collateral-consequences exception to the mootness doctrine does not apply because plaintiff was ineligible for earned good-conduct credit during his incarceration and would remain ineligible to earn those credits in the event he violates the terms of his release and is recommitted.

¶ 17 The collateral-consequences exception to the mootness doctrine allows for appellate review even though incarceration has ceased where a party has "suffered, or [is] threatened with, an actual injury traceable to the [plaintiff] and likely to be redressed by a favorable judicial decision[.]" *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477 (1990). Thus, "[s]ubsistence of the suit requires \*\*\* that continuing 'collateral consequences' \*\*\* be either proved or presumed." *In re Alfred H.H.*, 233 Ill. 2d 345, 361, 910 N.E.2d 74, 83 (2009) (quoting *Spencer v. Kemna*, 523 U.S. 1, 8 (1998)).

¶ 18 Section 3-6-3 of the Unified Code provides for statutory, meritorious, and earned good-conduct credits. 730 ILCS 5/3-6-3 (West 2008). In his complaint, plaintiff alleged he was denied the opportunity to obtain *earned* good-conduct credit. However, section 3-6-3(a)(4)

excludes inmates from receiving earned good-conduct credit who have been convicted of any inchoate offense relating, *inter alia*, to a Class X felony. 730 ILCS 5/3-6-3(a)(4) (West 2004) ("However, no inmate shall be eligible for the additional good[-]conduct credit \*\*\* if convicted of \*\*\* a Class X felony \*\*\* or any inchoate offenses relating to the foregoing offenses."). In Illinois, attempt is an inchoate offense. 720 ILCS 5/8-4 (West 2008); *People v. Ruiz*, 342 Ill. App. 3d 750, 758 n.2, 795 N.E.2d 912, 920 n.2 (2003).

¶ 19 In this case, plaintiff was convicted of (attempt) home invasion, an inchoate offense relating to a Class X felony, *i.e.*, home invasion. As a result, plaintiff was ineligible to earn good-conduct credit by participating in educational programs. Thus, if plaintiff violates his MSR and is recommitted, he would not suffer any injury related to the earned good-conduct credit issue he raises. Accordingly, the collateral-consequence exception does not apply.

¶ 20 III. CONCLUSION

¶ 21 For the reasons stated, we dismiss plaintiff's appeal as moot.

¶ 22 Dismissed.